

REDEVELOPMENT AGENCY MINUTES

**REDEVELOPMENT AGENCY/REGULAR AND JOINT CITY COUNCIL MEETING  
OF  
NOVEMBER 1, 1994**

The meeting called to order as The City Council at 10:05 a.m.

Roll Call

Present: Members Mathis, Roberts, Stevens, Warden, Stallings,  
McCarty, Vargas, and Chair Golding

City Manager, Jack McGrory  
City Attorney, John Witt  
Secretary, Charles G. Abdelnour

Excused: Member Kehoe

**JOINT HEARING - CONSENT**

1. Approving resolutions to:

Council Item No. 338, Redevelopment Agency Companion Item No. 1.

Item A. Approve the acceptance of \$2,000 from the Commission for Arts and Culture for a public arts project at the Tower building at University Avenue and Reno Drive; and

Item B. Increase the FY95 Redevelopment Agency budget to include the above-described \$2,000 for the City Heights Project budget; and

Item C. Authorize the expenditure of said funds for public art project.

See Mid-City Development Corporation Report dated September 21, 1994.

No one spoke in opposition to these items.

Motion by Member Roberts to approve (with Kehoe not present)  
Second by Member Stevens  
Vote: 8-0

**Council Item No. 338, City Council Resolution Number R-284856,  
and Redevelopment Agency Resolution Number R-2435.**

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3. Approving resolutions to:

Council Item No. 339, Redevelopment Agency Companion Item No. 3.

Item A. Authorize the expenditure of \$64,730 to provide the necessary funding for the deductive alternate in the City contract with L.R. Hubbard Construction Company for that portion of work on Broadway between Seventh and Eights Avenues in the Core Redevelopment District of the Centre City Redevelopment Project; and

Item B. Make certain findings that the proposed improvements are of benefit to the Centre City Redevelopment Project are or the immediate neighborhood in which the Project is located; that no other reasonable means of financing the improvements are available to the community; that the payment of funds for such improvements will assist in the elimination of blighting conditions inside the Project area; and that the proposed improvements are consistent with the Implementation Plan adopted for the Project pursuant to Health and Safety Code 33490.

See Centre City Development Corporation Report dated October 12, 1994.

No one spoke in opposition to these items.

Motion by Member Roberts to approve (with Kehoe not present)

Second by Member Stevens

Vote: 8-0

**Council Item No. 339, City Council Resolution Number R-284857, Redevelopment Agency Resolution Number R-2436.**

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2. FIRST IMPLEMENTATION AGREEMENTS TO DISPOSITION AND DEVELOPMENT AGREEMENT WITH GORDON/LUCKY VENTURE AND TO OWNER PARTICIPATION AGREEMENT WITH V. GORDON GROUP.

This item continued to November 15, 1994.

Council Companion Item No. 601.

(RA 95-41 and RA 95-42)

Item A. Approving a First Implementation Agreement to the amended Disposition and Development Agreement (DDA) with Gordon/Lucky Joint Venture for the development of the Southcrest Park Plaza in the Southcrest Redevelopment Project Area; and

Item B. Approving a First Implementation Agreement to the Owner Participation Agreement with V. Gordon Group for development of Parcels C-2 and C-3 of the site; and

Item C. Approving the revised budget for project costs related to site clearing and construction of public improvements adjacent to the Southcrest Park Plaza shopping center, including design, plan processing, permits, inspections, utility fees, etc.

See Deputy Executive Director Report 94-35, dated October 26, 1994.

No one spoke in opposition to the continuance.

Motion by Member Vargas to continue to November 15, 1994, (with Kehoe not present)

Second by Member Warden

Vote: 8-0

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The meeting adjourned as The City Council at 10:38 a.m.

The meeting reconvened as The Redevelopment Agency at 10:39 a.m.

**ADOPTION/CONSENT**

4. Approving resolution and document to:

Enter into an agreement with Fender and Dacquisto for legal services for condemnation of two properties required for the expansion of the Washington Elementary School site. The maximum compensation for this agreement is \$85,000.

See Centre City Development Corporation Report dated October 11, 1994.

No one spoke in opposition to this item.

Motion by Member Roberts to approve (with Kehoe not present)  
Second by Member McCarty  
Vote: 8-0

**Redevelopment Agency Resolution Number R-2437 and Document Number D-2176.**

5. Approving resolution to:

Amend the contract with West Coast General Corporation (WCGC) by adding \$31,884.37 for a total contract amount not to exceed \$1,376,903.55.

See Centre City Development Corporation Report dated October 11, 1994.

No one spoke in opposition to this item.

Motion by Member Roberts to approve (with Kehoe not present)  
Second by Member McCarty  
Vote: 8-0

**Redevelopment Agency Resolution Number R-2438.**

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The meeting adjourned as The Redevelopment Agency at 10:40 a.m.

The meeting reconvened as The City Council at 10:41 a.m.

The meeting adjourned as The City Council at 12:00 p.m.

The meeting reconvened as The City Council 2:10 p.m.

Chair Golding stated for the record that the Joint City Council/Redevelopment Agency Item Number 2 and City Council Item No. 601 needed to be continued to November 15, 1994.

Motion by Member Mathis for reconsideration on both these items 601 and 2 (with Roberts, Kehoe and Stevens not present).

Second by Member Vargas

Vote: 6-0

The meeting adjourned as The City Council at 2:11 p.m.

The meeting reconvened as The Redevelopment Agency at 2:12 p.m.

Motion by Member Mathis to continue both these items 601 and 2 to November 15, 1994 (with Roberts, Kehoe and Stevens not present)

Second by Member Vargas

Vote: 6-0

The meeting adjourned as The Redevelopment Agency at 2:14 p.m.

The meeting reconvened as The City Council at 2:15 p.m.

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The meeting adjourned as The City Council at 4:04 p.m.

The meeting reconvened as The Redevelopment Agency at 4:05 p.m.

**PUBLIC HEARING**

6. Approving resolution to:

- Item A. Declare West Coast General Corporation (WCGC) in violation of Public Contract Code Section 4106 and Contract No. AC 9400474; and
- Item B. Declare West Coast General Corporation in default of Contract No. AC 9400474; and
- Item C. Cancel Contract No. AC 9400474 with West Coast General Corporation pursuant to Public Contract Code Section 4110.

See Centre City Development Corporation Report dated, October 25, 1994.

Chair Golding stated these actions concerning contracts with West Coast General Corporation.

Pam Hamilton, Executive Vice President, Centre City Development Corporation, gave a brief background regarding this matter. We are asking that the Redevelopment Agency declare West Coast General Corporation in violation of Public Contract Code Section 4106 and Contract No. AC 9400474, declare West Coast General Corporation in default of that contract, and cancel that contract with West Coast General Corporation pursuant to Public Contract Code Section 4110.

Per Section 6-4 of the Standard Specifications of Public Works Construction the contractor will be paid the actual amount due based on unit prices of lump sums bid and the quantity of work completed at the time of cancellation, assuming that you do cancel, plus damages caused to the Agency by acts of the contractor causing the cancellation. Should the Agency find West Coast General in default, written notice to that effect will be served upon the surety. The Surety shall, within five days, assume control and perform the work as successor to the contractor. CCDC was authorized by the Agency to administer the Gaslamp Quarter Park Construction Contract. That contract was awarded to West Coast General on July 25 of this year, and construction started on September 12, 1994.

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West Coast General - Public Testimony continued by Pam Hamilton

This matter is before you because CCDC feel compelled to inform you that we believe West Coast General has breached the contract and has violated the Subletting and Subcontracting Fair Practices Act. The City and Agency have found that strict adherence to the Subcontracting Act is necessary to maintain the integrity of our public bidding process. The Act requires primes to list all sub and to only utilize those subs listed and authorized by the awarding authority. West Coast General, along with three other primes, submitted bids to CCDC last spring. West Coast General did not list an electrical subcontractor; and when questioned by CCDC, West Coast General made affirmative representations to us that they had qualified journeymen on staff who would perform the \$100,000 or so worth of anticipated electrical work.

Gary Bosse, CCDC's field engineer on the project, and Gary will not testify about his knowledge of events that have led to this hearing.

Gary Bosse, Resident Engineer for CCDC. I am currently performing construction administration duties as well as inspection duties on that construction project. The following is a brief description of that I have observed on the job site and recollection of conversation I have had with various employees of West Coast and Knox Electric.

On October 17, I first noticed a Knox Electric truck on site. Knox was not a listed sub in the bid document, so I documented that as such in my inspection reports. I noticed two men working out of that truck installing electrical conduit in a vault that was to be constructed on the project.

On the 18th, I witnessed the same, and I took a photograph of that.

On the 19th, I witnessed the same.

On the 20th, we were temporarily stopped on construction of the vault with regards to the installation of the electrical work due to a conflict. At that point, I notified Dave Davey, Vice President of West Coast General, and Don Nestor, estimator for West Coast General, of the conflict and I asked them to get the electrical subcontract and himself together for a meeting the following day so that we could resolve that conflict.

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## West Coast General - Public Testimony continued by Gary Bosse

The next day, we met at 8:30; myself, Dave Davey, Vice President of West Coast General, Craig Knox, Principal of Knox Electric, and our structural design consultant. The meeting last approximately two hours, and Craig Knox was a very active participant in the meeting. At the end of the meeting, Mr. Knox made a phone call from the job trailer in which I overheard him instruct the person on the other end of the line to return to the job site and remove the existing electrical conduit, as that was part of our resolution to the conflict.

On October 24, the following Monday, I called Craig Knox to inquire about the status of the resolution to the conflict discussed at that meeting on the 21st. I also mentioned that I was concerned that since there would be obviously be extra work involved in the solution to the conflict, that Knox Electric was not a listed subcontractor. This meant that there was no contractual method for me to make sure they get paid for any extra work they perform above and beyond the original scope of work. Mr. Knox indicated that he was aware of this. He also indicated that he was not aware that this situation was taking place-the fact that this was a City project and that he would be an unlisted subcontractor when he bid the job to West Coast General. Mr. Knox said that West Coast General indicated they would hire Knox's employees as consultants and they would be on West Coast General's payroll. He said West Coast General was purchasing material from Knox through a purchase order. Only after Knox signed that purchase order did West Coast General inform him that this was a City project, and that he would hire as a consultant. Mr. Knox ended the conversation that day by saying he wished West Coast General would have been more up front with him at the start of the project.

On the 25th, I had a phone conversation with Dave Davey; and after telling him that I had talk to Mr. Knox, Mr. Davey instructed me not to contact his subcontractors directory-that all contact had to be through West Coast General.

Again, on the 27th, I was in the trailer at the job site and overheard a phone conversation between West Coast General's Superintendent and West Coast General's Home Office. The Superintendent stated that he had talked to Knox so they knew they were moving on the site next week. West Coast General's Superintendent also told me that Knox had a question for me regarding light fixture locations.



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West Coast General - Public Testimony continued by Gary Bosse

On the 28th again Knox was on site, and on the 31st I observed the same.

These observations and conversations led me to believe that West Coast General was using an unauthorized subcontractor to perform contract work. I have been a resident engineer for the past four years and have worked for the City of San Diego Engineering Department Field Division and Water Utilities Engineering Division. I have inspected many City public works contracts, and the interaction that I have observed between West Coast General and Knox Electric is typical of a general contractor and subcontractor relationship.

Pam Hamilton said on October 21, entirely independent from everything Gary observed at the site, CCDC received a letter from Will Bendix Electric. Will Bendix Electric is a licensed electrical subcontractor who, last spring, submitted a bid for the electrical work to all four primes competing for the contract. Will Bendix has asked CCDC to take immediate action against West Coast General, and Will Bendix would like to testify about their concerns.

Tom Gade, attorney representing Bendix. I have offices at 1010 Second Avenue, San Diego. He stated Mr. Bendix is here and Ms. Kerr is here, and they are prepared to testify. If I may, I would just like to make a couple of points with regard to what has gone on here. As was alluded earlier, CCDC on the earlier bid, the L.R. Hubbard contractor had submitted a bid, protested the bid because of the lack of a listed electrical sub by West Coast General. CCDC heard that protest and, I guess, substantial representation were made to CCDC with regard to who was going to perform the electrical contractor work on this project. So it was not a case of where it just came in without there being a prior hearing.

The second thing I would like to tell you is that there are two agencies that could not be here today, two entities that could not be here today because of prior commitments. I have a letter from the Latino Builders' Industry Association, and I would like to pass that out if I could. They are in support of our position. And there is another entity that Ms. Kerr will tell you about-the Women Contractors' Owners Association, who would be here but for the short notice and would like to register their support for following the contractor license law. With that, Mr. Bendix. I do not know that he is prepared to make a statement unless you have questions of him.

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West Coast General - Public Testimony continued

Chair Golding asked sir, do you wish to make a statement or do you just want to wait for questions?

Will Bendix, I will wait for questions.

Chair Golding, thank you sir.

Pam Hamilton said I was going to conclude the staff report and then suggest that you hear from West Coast General.

In summary, CCDC believes that West Coast General has blatantly, unethically, and unlawfully violated our contract and the Subcontractor's Act. This issue has created an unreconcilable breach of contract between CCDC and West Coast General; and, therefore, we believe it would be in the best interests of the Agency to declare them in default and cancel the contract.

Robert Marks, representing West Coast General. My address is 3900 Harney Street, San Diego.

I think there are some very important things to point out here. The first one is that what is being recommended here is extremely serious-to cancel a contract to declare a contractor in default.

We first heard about these assertions by facsimile letter last Tuesday. That letter was received after business hours. We have been trying to have a meeting with or present our side of this to the CCDC, but that has been to no avail. I think it is very important to point out that ...

Chair Golding, sir, are you saying that no one from CCDC would meet with you?

Robert Marks, I am saying that we asked "Could we have more time". "Could we get information".

Chair Golding asked that they would not meet with you or discuss it with you?

Robert Marks said we submitted a letter and then the end result was they were going to attempt this action today and there was not much that we could do about that. Based on those statements, I did not further press for a meeting. It appeared to be a .. but that was our first request-can you hear our side of this? Can we have an investigation? Can we present our information?

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West Coast General - Public Testimony continued by Robert Marks

I think it is important to note that I have been given information that Mr. Bosse also called Mr. Knox on October 27, and he said to Mr. Knox, "Do you have a subcontract with West Coast"? And Mr. Knox said, "N.". I find it disheartening that evidence or that information was not presented to you, but was excluded from what I see was a prepared statement.

The truth of the matter is Knox does not have a subcontract with West Coast. And I think if you listen to everything that was said here, no one said there is a subcontract with Knox because there is not.

The other thing is, West Coast's initial plan on this job was to use journeyman electricians that it had lined up. This job was supposed to start in May; it started in September. West Coast lost the opportunity to use those men. They went and worked elsewhere. There's not a journeyman electrician around that will wait from May until September for a particular job.

Member Stevens said I am sorry. You are saying men or contractor? There is a difference. Are you saying "hire some men" or "hire a contractor"?

Robert Marks answered men.

Member Stevens asked employees?

Robert Marks answered yes.

Member Stevens, okay, thank you.

Robert Marks said construction employees who move from job to job as they come up.

Member Stevens said you do not contract with the employees. You go out and hire them as a need.

Robert Marks responded absolutely.

Member Stevens, okay, so anybody can go away. You can always go back and hire somebody else.

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West Coast General - Public Testimony continued by Robert Marks

Robert Marks answered that is correct. And what happened here is West Coast has hired electricians. The people that these individuals are say are on the job site are employees and we submitted W-4 statements to show that. I noticed that they did not reference that to you either. What we have is perception on the part of, I guess, one or more people in CCDC and perhaps this other subcontractor that there is a violation. But there is not violation. And we have had no opportunity to present our information. And if you look at the cold hard facts, if you look at the written documentation, these are employees. There was a Knox truck out there, but that was leased equipment; leased equipment because it was needed equipment, not a subcontract. But what they have described as they believe", there operative word was they "believe", there has been a violation, the fact is there has not been a violation. And what they are asking you to do is cancel a contract, find a contractor in default, who had essentially less than one week notice, no opportunity to present this information, and here we find ourselves. What we are asking you to do is to not take this rash action. They have not proof because there is no proof. So I respectfully request that the Council not take the drastic action suggested by committee based on their "beliefs". Thank you.

Member Mathis said can I ask a question of the speaker?

Chair Golding said go ahead.

Member Mathis said do I understand you to say that these folks were not working for Knox, they were working directly for you?

Roberts Marks said they are working directly for West Coast, yes, sir.

Member Mathis asked do they work for Knox as well?

Robert Marks responded yes, they have worked for Knox.

Member Mathis said they have worked for Knox? They are using a Knox truck? Does Knox customarily lease their truck to people who are not their employees?

Robert Marks answered that one I do not know sir, but...

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West Coast General - Public Testimony continued by Robert Marks

Member Mathis stated have you talked to Knox?

Robert Marks said no. In fact, we wanted to have Knox present, but he was not available today. That is another problem with the amount of time we had.

Member Stevens said I thought you said that Knox was your consultant.

Robert Marks said Knox consulted on a problem, and electrical problem, an unforeseen...

Member Stevens said but they consulted with you?

Robert Marks responded as an expert, yes.

Member Stevens said so, as your consultant, I am surprised they are not here today.

Robert Marks stated it was a notice issue there. It is a matter of time. Like I said, we received this facsimile letter approximately six in the evening last Tuesday. My first step was to contact CCDC and say, listen, we think there is a mistake here. We have some information, etc. We sent the letter showing the W-4 form, but we were unable to do anything else.

Member Mathis said you have not said that Knox was not working for you. Are you making that statement, that Knox is not working for you or making a statement that they just do not have a contract with you?

Robert Marks responded I am making the statement that Knox, as an entity, is not working for West Coast. West Coast had to resort to electricians other than those than anticipated because this project could not start in May when it was anticipated. By the time September came around, the planned journeyman electricians were no longer there. I can get a declaration from one of those, but again, we have had timing problems.

Member Mathis said I am trying to figure out what the relationship is here. Did you hire these electricians through Knox?

Robert Marks responded with Knox's permission. We did not want to disrupt the relationship between them and their employees, but...

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West Coast General - Public Testimony continued by Robert Marks

Member Mathis asked so you went to a contractor and got his permission to hire his people without making a contract with him, and they used his truck?

Robert Marks responded we went and said to him, we do not want to interfere with your business relationship. The electricians we wanted to use are no longer available. Would you be upset, would you come after us, if you had any people that normally work for you and had time, can we hire them? And Knox said no problem.

Member Mathis said in other words, Knox said to you, it is alright if you do not hire me as a subcontractor but you can go ahead and use my people?

Robert Marks answered no, sir, that is not how it went either. It was a situation of would you be upset, Knox, if we asked any of the people that were not working for you currently if they would mind working for us on this job.

Member Mathis said Knox must be a very easy-going fellow. I would think if someone came to me, and I were a contract, and wanted to hire people that worked for me without making a business relationship with me as their boss, I do not see how I could stay in business.

Robert Marks responded the thing that I think that is critical here is that if Knox had work available for these people, then certainly he would want to use them. I know many contractors that bid jobs and try to get jobs and keep the workforce that they consider consistently their constantly occupied so that they do not lose them. This gave Knox actually the opportunity to not have work and yet not permanently lose the employee because someone else said listen I have got work. I need electricians. Would it interfere with your relationship with these people if they are not currently working for you that I hire them.

Member Mathis asked there was no consideration to Knox for this service of providing his people?

Robert Marks responded no.

Member Mathis asked and his truck?

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West Coast General - Public Testimony continued by Robert Marks

Robert Marks answered that is right. This is just hiring of employees. There is no consideration that flowed to Knox., and Knox's lack of objection was the fact that he did not have work for them at that time.

Member Mathis said thank you.

Pam Hamilton said CCDC did receive a letter from West Coast General dated October 26th. We reviewed that letter carefully. There was nothing in that letter that swayed our opinion that a rose by any other name is a subcontract. Rick Duvernay from the City Attorney's Office and other City Attorney representatives have worked with us on these issues. The subcontracting law talks about what is a subcontract, whether you call it one or not. Rick is here if you would like him to tell you the things which characterize a subcontract. But based on the information from the City Attorney and our observations, that is why you have the recommendation before you today.

Member Stevens said I have a couple of questions.

Member Vargas said I have not asked any questions.

Chair Golding asked if the questions of the speaker are over? Okay, Mr. Vargas.

Member Vargas my question is for Rick. You listened to the conversation and questioning, do you think there was a violation?

Rick Duvernay, City Attorney, stated yes. We have looked at the information that they have provided to us and evaluated the facts that Gary presented to us along with the letter from Bendix. We believe there is a violation. The Subcontractors Act defines a subcontractor as anybody who has a license under the Business and Profession Code to be a contractor, like Knox does. If they enter into an agreement with a prime after the contract was awarded, you have a subcontract. Clearly, what we have here is we believe where West Coast General and Craig Knox, the principal at Knox Electric, entered into a deal.

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## West Coast General - Public Testimony continued by Rick Duvernay

And the deal was--we will supply you with the supplies and the equipment and once our employees cross the line they become your employees. And we do not believe you can circumvent the subcontracting law by simply putting employees from the sub onto the payroll of the prime once they cross onto the job site. And although there is not a whole lot of case law in this area with the Subcontractors Act, there is quite a bit in the workers' comp area, and what the courts have basically said is that it is not so much the label that matters, what you try to call the person, but more the relationship that exists. And we have examined that and asked them the hard questions. "If they are really employees, did you advertise for positions? Did you accept applications? If you can show us that there was bonafide employer/employee relationship here, then we will want to hear that. And they were not able to produce that kind of evidence for us to make us change our mind about what our perceptions were.

Member Vargas said that makes me feel better. He asked Pam, in your letter, in the last paragraph you stated "may have engaged: and that left us little bit uncomfortable, but it seems to me with your explanation, I am certainly much more comfortable with going forward. I would like to ask a couple of questions, Pam, of you. The gentleman that came up stated that he and his company or the company that he represents really did not have an opportunity to communicate with you and your organization. Could you comment on that? It seems to me that he stated that he called up and it seemed that he would get no where, so no meeting was forthcoming. Could you explain that?

Pam Hamilton stated I can testify to my own knowledge. To my own knowledge, we were not asked for a meeting. We did not decline to meet. We did receive something in writing from them. The violation of the code requires five (5) day notice, in fact, a little bit more than a five (5) day notice was provided. One of the reasons we feel that we need to move quickly on this--everyday that the contractor is on the site, he is entitle to be paid for the work that is done. So one of the dilemmas in terms of the harshness of the penalty is that if we do nothing, then the contract proceeds. I can tell you fro the staff perspective it would be easier for us to just get this job done. We are interested in having the park built and operational. We are not here because we are trying to cause a problem, but we feel that is so blatant, that for us to look the other way would be inappropriate.



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West Coast General - continued

Member Vargas said that is good. My next question was going to be as you stated here the fiscal impact, that they are going to be paid for the actual amount due based on unit prices or lump sum. And it goes on and you just describe that quite well. I have to say that in one sense it does not seem very serious. Here you have a contract; the contractor's out there doing basically what you want him to do, put this thing up. But it is quite serious when you go out subcontract shopping, because then it gives you an unfair advantage. And that is the thing I think we should be concerned with. And I make the motion supporting staff recommendation that West Coast General in violation utilizing an unauthorized electrical subcontract.

Chair Golding thanked Mr. Vargas and Mr. Stevens.

Member Stevens asked was there any subs listed in the bid for this work?

Pam Hamilton asked for electrical work?

Member Stevens responded yes.

Pam Hamilton stated no.

Member Stevens asked was it through the employees like was stated here?

Pam Hamilton answered they did not list an electrical subcontractor, and we thought that was unusual, which was why we asked the question initially. They indicated that they would be journeymen. However, as Gary has testified, Know Electric is out there calling the shots on the electrical work.

Member Stevens said the reason I am supporting this motion, staff recommendation, is because this is very serious because it has happened before with the City contracts in that contractors have been listed, in many cases did not get the work. They were listed as MBE's and WBE's, and they complained later because they did not get the work. And when somebody can find a way to circumvent the process we have, because it is not the way we should be doing business. I just cannot believe that anybody who works for a company called Knox, that the company lets them drive their truck around and yet they are not employed by them. That does not pass the smell test. I call for the question on this item unless they have some more discussion.

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West Coast General - continued

Chair Golding asked is there someone else who wishes to speak.  
Ms. Warden?

Member Warden responded no.

Motion by Member Vargas that West Coast General in violation  
utilizing an unauthorized electrical subcontract (with Roberts  
and Kehoe not present).


Second by Member Stevens

Vote: 7-0

**Redevelopment Agency Resolution Number R-2439.**

**ADJOURNMENT**

The meeting adjourned at 4:35 p.m. into Closed Session. The  
Special Joint City Council/Redevelopment Agency meeting of  
November 10, 1994.

  
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Secretary of the Redevelopment Agency  
of the City of San Diego, California